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THOMAS H. McTAVISH, C.P.A.
AUDITOR GENERAL

December 28, 2005

The Honorable Leon C. Drolet
Michigan House of Representatives
House Office Building, Room 797
Lansing, Michigan

Dear Representative Drolet:

This letter is in response to your request for my office to review the activities of the Michigan Civil Rights Commission (MCRC) and the Department of Civil Rights (DCR) "as part of their participation in a campaign to defeat Proposal 2004-2, the constitutional amendment ratified by voters in 2004 that prohibits same sex marriage." In addition, you requested my office to review the "participation of the Michigan Women's Commission (MWC) in a campaign to oppose a statewide ballot initiative which would ban affirmative action in Michigan."

Below is a discussion of the issues by entity and our conclusions related to your questions. Our conclusions are based on a review of the applicable State statute, Administrative Rules, Civil Service Rules and Attorney General Opinions. We have also considered the position of the Department of Civil Rights as presented in a press release dated May 10, 2005. However, our conclusions should not be considered to be a legal determination of the MCRC, DCR, or the MWC's compliance with State laws and regulations.

Michigan Civil Rights Commission

On October 25, 2004, the Michigan Civil Rights Commission adopted a resolution announcing its opposition to Proposal 2004-2, the ballot proposal approved by the voters, which placed the definition of marriage in the Constitution. The resolution stated "Therefore, Be it Resolved, that the Michigan Civil Rights Commission opposes Proposal 2 and urges Michigan voters to resist this effort. It is our conclusion that the Commission's use of the term *"urges Michigan voters to resist this effort"* and subsequent publication of the resolution on the Department of Civil Rights web page resulted in the expenditure of public funds to influence the outcome of a ballot proposal. Accordingly, it is our opinion that the actions of the

Commission were a violation of the Michigan Campaign Finance Act and were contrary to prior Attorney General Opinions.

The Michigan Campaign Finance Act, Section 169.257(1) of the *Michigan Compiled Laws* states: *A public body or an individual acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services*

The Department in their May 10, 2005 press release stated that it believes that the resolution was an "expression of views by an elected or appointed public official" and thus exempted from Section 169.257(1) of the *Michigan Compiled Laws*. It is our opinion that the resolution was more than an expression of views; rather it was providing direction to the electorate of Michigan on how to vote for the proposal.

Our position is further supported by The Attorney General in Opinion No. 5597, issued November 28, 1979 which states:

"...Although a board or commission may expend appropriated funds to inform the public in an objective manner on issues relevant to the functions of the board or commission, it may not expend public funds to urge the electorate to support or oppose a particular candidate or ballot proposal..."

While the Commission's resolution was directed at "urging the electorate", the Commission did not expend State funds related to this activity. The only funds expended related to this activity were expended by the Department of Civil Rights (see below).

Department of Civil Rights

The Department of Civil Rights published the October 25, 2004 MCRC resolution on the Department's website. We conclude that the costs associated with the inclusion of the resolution on the Department's web site should be considered to be an expenditure of public funds to influence an election. While the Department is required to make the actions of the Commission available to the public, because the resolution contained statements in violation of the State Campaign Finance Act and was contrary to prior Attorney General Opinions, the costs directly associated with the inclusion of the resolution on the web site were an inappropriate expenditure of public funds. We have estimated these costs to be \$150.

The Department also issued a press release at the time the resolution was posted that comments on the Civil Rights Commission's action. The press release contained statements from the Department Director and a Commission member and listed a state employee as the contact person. In addition, the Department's web site contained links to a Letter to the Editor written by Commission Chair and Vice-Chair and other articles which referred to the Commission resolution. We conclude that the costs associated with the issuance of the press release and the posting of the various links to the comments of the Department Director and Commissioner were allowable under the State Campaign Finance Act and prior Attorney General Opinion's.

Section 169.257(1)(b) of the *Michigan Compiled Laws* allows a public body to disseminate factual information concerning issues relevant to the function of the public body. The press release, excluding the portion related to the resolution, contained statements of opinions of the Department Director, the Chair of the Commission, and Vice-Chair of the Commission. The links to the Letter to the Editor and the other articles also referred the reader to factual statements on Proposal 2004-2.

Michigan Women's Commission

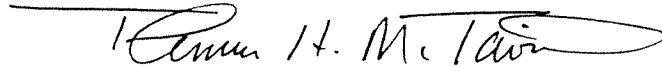
The Director of the Michigan Women's Commission included in its Winter 2003 newsletter an article titled "Oppose Ban on Affirmative Action". The article reported that the Michigan Women's Commission had voted to "oppose anti-affirmative action activist Ward Connerly's announced plans for a campaign to ban affirmative action in Michigan, through a statewide ballot initiative in November 2004." The article also included a definition of affirmative action including; the legal basis for its establishment, discusses Michigan discrimination laws and the status of women and minorities in the workplace, and includes a statement showing how affirmative action is needed for the improvement in the quality of life for women and minorities. The content of the article did not advocate any type of vote on the proposal.

We reviewed the powers granted to the Michigan Women's Commission and concluded that the publication of the article was consistent with the Commission's authority: Section 10.73(a) of the *Michigan Compiled Laws* requires the Commission to "Stimulate and encourage throughout the state the study and review of the status of women in this state." Subsection (b) further requires the Commission to "Strengthen home life by directing attention to critical problems confronting women as wives, mothers, homemakers and workers."

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If you have any additional questions, please contact me or Scott M. Strong, C.P.A.,
Deputy Auditor General.

Sincerely,

A handwritten signature in black ink, reading "Thomas H. McTavish". The signature is written in a cursive style with a horizontal line extending from the left and a large loop at the end.

Thomas H. McTavish, C.P.A.
Auditor General